IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 1ST SEPTEMBER 2006 / 10TH BHADRA 1928

WP(C).No. 7656 of 2004(J)

PETITIONER:

N. ABDUL AZEEZ, LAVANYA TOURS AND TRAVELS, DOWN HILL, MALAPPURAM.

BY ADV. SMT.SUMATHY DANDAPANI

RESPONDENTS:

1. **THE SECRETARY, REGIONAL TRANSPORT AUTHOROTY, MALAPPURAM.**
2. **THE DEPUTY TRANSPORT COMMISSIONER CENTRAL ZONE-I, THRISSUR.**
3. **THE TRANSPORT COMMISSIONER, THIRUVANANTHAPURAM.**
4. **THE VILLAGE OFFICER, MALAPPURAM.**
5. **THE TAHSILDAR, REVENUE RECOVERY, MANJERI, MALAPPURAM DISTRICT.**

* **ADDL.R6 IMPLEADED**

ADDL.R6:- THE DISTRICT TOURISM PROMOTION COUNCIL , MALAPPURAM. IS IMPLEADED ADDL. 6TH RESPONDENT AS PER ORDER DT. 6.7.04 IN IA.5178/04.

BY GOVERNMENT PLEADER SRI.SURARSHAN
SRI.P.RAVINDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/09/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.7656/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE REQUEST DT.30.12.2000 FROM THE PETITIONER TO THE 1ST RESPONDENT.

EXT.P2:- COPY OF THE ORDER NO.C9-1097/2001/M DT.3.10.02 OF THE REGIONAL TRANSPORT OFFICER, MALAPPURAM.

EXT.P3:- COPY OF THE ORDER N O.C/2366/2002/CZI DT.4.3.03 OF THE 2ND RESPONDENT.

E.XT.P4:- COPY OF THE ORDER NO.B1/202/TC/03 DT.21.2.04 OF THE 3RD RESPONDENT.

.EXT.P5;- COPY OF THE DEMAND NOTICE DT.D5/48433/02 DT.6.1.03 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT.

EXT.P6:- COPY OF THE DEMAND NOTICE NO.D5.48433/02 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT.

E.XT.P7:- COPY OF THE CHECK REPORT IN RESPECT OF VEHILCE KL.10/E.4200 BY THE ASSISTANT MOTOR VEHICLES INSPECTOR, REGIONAL TRANSPORT OFFICE, MALAPPURAM.

EXT.P8:- COPY OF THE APPEAL PREFERRED BY THE PETITIONER BEFORE THE DEPUTY TRANSPORT COMMISSIONER , CENTRAL ZONE, THRISSUR DT.29.11.02.

E.XT.P9:- COPY OF THE REVISION PETIITION FILED BY THE PETITIONER BEFORE THE TRANSPORT COMMISSIONER, THIRUVANANTHAPURAM DT. APRIL 2003.

E.XT.P10:- COPY OF THE CIRCULAR NO.31/89 DT.20.12.1989 ISSUED BY THE TRANSPORT COMMISSIONER , THIRUVANANTHAPURAM.

EXT.P11:- COPY OF THE NEWS ITEM APPEARD IN MALAYALA MANORAMA DAILY DT.8.1.05.

EXT.P12:- COPY OF THE NOTICE NO.R.1-858/M.V.T/02-03 DT.21.3.05 ISSUED TO THE PETITIONER BY THE TAHSILDAR ERANAD TALUK, MANJERI.

RESPONDENT EXHIBITS

EXT.R6(a):- COPY OF THE ACKNOWLEDGMENT RECEIPT DT.30.3.04.

EXT.R6(b):- COPY OF THE BILLS (5 NOS.) ISSUED BY M/S.T.V.S. IYENGAR & SON S LTD.,

EXT.R6(c):- COPY OF THE REGISTRATION CERTIFICATE EVIDENCING TRANSFER OF OWNERSHIP.

/TRUE COPY/

C.N.RAMACHANDRAN NAIR, J.

.....

W.P.(C) No.7656 of 2004

.....

Dated this the 1st day of September, 2006.

JUDGMENT

Heard counsel for the petitioner and the Government Pleader. I have perused the original records produced by the Government Pleader in court. The petitioner who is a contract carriage operator in respect of a bus bearing Registration No.KL.10/E 4200 claimed exemption from motor vehicle tax for seven quarters commencing from 1.1.2001 to 30.9.2002. However, exemption was rejected because during enquiry it was noticed that vehicle is not seen garaged in the house premises of the petitioner as declared in the G Form. The petitioner's case is that there was no timely enquiry on G Form and petitioner was not aware of the reports filed. The petitioner has a further case that inspection reports were subsequently manipulated after disallowing exemption and demanding tax from the petitioner. The R.T.O. based on the reports of the Assistant Motor Vehicle Inspector rejected claim of exemption and demanded tax for the whole period. This was confirmed in appeal by the Deputy Transport Commissioner and in revision by the Joint Transport Commissioner against which this O.P. is filed.

2. The vehicle is a 1996 model bus kept for operation as a contract carriage. The vehicle was seen used on road on 12.9.2002 and the same was seized as use was during period for which G Form was filed. However, petitioner has a case that petitioner had written a letter on 26.7.2002 to the R.T.O. stating that the

vehicle will be used from 1.8.2002 onwards. Therefore, according to the petitioner, the use of the vehicle on 12.9.2002 does not go against claim of exemption upto 31.7.2002. The R.T.O. collected information from petrol pump about purchase of diesel during period when vehicle was stated to be garaged without use. Records show that Motor Vehicle Inspector conducted enquiry and during enquiry, vehicle was not seen garaged in the place of garage mentioned in the G Form. However, I find substance in the contention of the petitioner that report dated 4.2.2001 of the Motor Vehicle Inspector is a bogus one because year is corrected in the said report in ink. Moreover, it is admitted that on the date of filing the report i.e. on 4.2.2001, the person who issued the report was not the Assistant Motor Vehicle Inspector in the R.T.O. Office at Malappuram. Therefore, the first report of the said Motor Vehicle Inspector is unbelievable. There is nothing to indicate that the enquiry was conducted by the Motor Vehicle Inspector before giving report for the remaining period. However, I find petitioner's conduct is not natural because the records show that most of the time petitioner's vehicle was under G Form and on several occasions even outside the period referred to herein, the petitioner's vehicle was not seen in the place of garage during period when exemption was claimed by the petitioner filing Form G. In other words, disallowance of Form G furnished by the petitioner for other periods is also quite common. Therefore, use of the vehicle during period for which exemption was claimed appears to be not unusual with the petitioner. This

affects the credibility of the petitioner's contention that all the inspection reports are manipulated. However, considering the fact that the adjudication orders on G Forms were not issued in time and since the vehicle itself was sold during pendency of O.P. to the additional 6th respondent for Rs.1,56,475/-, I feel reduction is called for for the huge demand of tax much of which is surcharge on account of belated payment of tax. Accordingly, I reduce the demand of tax to 50% i.e. from Rs.3,27,590/- to Rs.1,63,795/- for the period from 1.1.2001 to 30.9.2002. The amount recovered by sale of vehicle should be adjusted towards arrears of tax. If any other arrears is due for subsequent period or for prior period, the same can be adjusted from out of payment of Rs.1 lakh made by the petitioner under interim order of this court dated 1.4.2004 and balance amount will be refunded to the petitioner within a period of one month from the date of production of copy of this judgment.

The W.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms